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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re: Chapter 11
Case Nos. 01-30135 (RG) and 01-38790 (RG)
G-I HOLDINGS INC., et al., (Jointly Administered)

Debtors.

_____ /

UNITED STATES OF AMERICA,

Plaintiff,

v.

Adversary Action No. _____

G-I HOLDINGS INC., et al.,

Defendants.

_____ /

**UNITED STATES' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint for declaratory and injunctive relief pursuant to the Declaratory Judgement Act, 28 U.S.C. §2201(a); Section 303 of the Clean Air Act ("CAA §303"), 42 U.S.C. §7603; and Section 7003 of Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA §7003"), 42 U.S.C. §6973, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action against G-I Holdings, Inc. ("G-I"), requesting that the Court direct G-I to take immediate and appropriate action at the Vermont Asbestos Group Mine Site ("VAG Site") to abate conditions which present, or may present, an imminent and substantial endangerment to public health, welfare, and the environment, within the meaning of CAA §303 and RCRA §7003. As set forth below, G-I is the successor by merger to GAF Corporation, the owner and operator of the VAG asbestos mining and milling operation. As such, G-I is liable under federal environmental law as a prior owner and operator of a pollution source; as a person causing or contributing to the alleged pollution; and/or as a person accountable to the public for its past handling, storage, and disposal of solid waste.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 303 of the Clean Air Act, 42 U.S.C. §7603, Section 7003 of RCRA, 42 U.S.C. §6973, and

28 U.S.C. §§ 1331, 1345, 1355 and 1367, and over G-I.

3. Venue is proper in the District of New Jersey pursuant to CAA §303, and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because G-I conducts business in this district and has sought bankruptcy protection here.

DEFENDANT

4. The Defendant, G-I, is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1361 Alps Road, Wayne, New Jersey 07470. G-I is the successor by merger to GAF Corporation ("GAF") and filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101, et seq.) with this Court on January 5, 2001. GAF Corporation was created in the 1967 merger of the Ruberoid Company ("Ruberoid") and the General Aniline & Film Corporation. In 1971, General Aniline changed its name to GAF Corporation ("GAF").

5. GAF operated as two divisions: (i) the Chemicals Division and (ii) the Building Materials Division. In 1986, the two divisions were incorporated as wholly-owned subsidiaries of GAF. In April 1991, the chemicals business was re-incorporated as International Specialty Products, Inc. ("ISP"), a subsidiary of GAF Chemicals Corporation. In January 1994, GAF formed another wholly-owned subsidiary, Building Materials Corporation of America ("BMCA"), to take over the building materials business. In October and November, 2000, these GAF subsidiaries (ISP and BMCA) ultimately became direct subsidiaries of G-I Holdings, Inc., and the former GAF entity ceased to exist.

GENERAL FACTUAL ALLEGATIONS

6. The Defendant owned and operated the Vermont Asbestos Group Mine Site ("VAG Site") in Lowell and Eden, Vermont, the largest chrysotile asbestos mine and milling operation in the United States. From 1936 to 1975, the Defendant mined and milled asbestos at the VAG Site by mechanically separating asbestos fibers that are embedded in ore-bearing rock.

7. The majority of the acreage contaminated by asbestos-containing waste rock and mill tailings accumulated during the Defendant's operation and under Defendant's direction. In particular, the Eden mill tailings pile, estimated at 3.5 million cubic yards, reached its maximum volume during that time period, and the Defendant's operations contributed significantly to the size of the Lowell mill tailings pile, today estimated at 16 million cubic yards.

8. Because the Defendant failed to take measures at the time this material was generated to prevent future releases and/or emissions or to properly dispose of this material, there is asbestos-containing material throughout the Site, including asbestos that remains exposed to the ambient air and asbestos-containing material that has spread and is continuing to spread over a significant portion of the Site property as well as to areas off-Site.

9. The impacts from Defendant's handling, storage and/or disposal of asbestos-containing material is particularly evident at the Eden tailings pile, which was fully formed at the time of the Defendant's sale of the operation to VAG in 1975. Prior to the sale of the property, the Defendant failed to take significant action to mitigate or minimize the ongoing environmental and public health consequences of its milling and disposal practices.

10. Since the Defendant's sale of the operations, the Eden pile has eroded significantly, carrying substantial quantities of asbestos-containing materials into areas around the VAG Site,

including Hutchins Brook, within the Lamoille watershed. Comparable erosion of the Lowell waste pile is carrying mine and mill tailings into Corez Pond and Burgess Branch within the Mississquoi watershed. Evidence of asbestos contamination is readily visible in these local water bodies.

11. The Defendant also transported and/or disposed of solid waste containing asbestos at a number of off-site locations as fill material. The exact location and use of this material are unknown to the United States at this time. Human exposure to asbestos contained in this solid waste is a serious public health issue.

12. The asbestos that covers the VAG Site is defined as a hazardous air pollutant under Section 112(b) of the CAA, 42 U.S.C. § 7603. Among other things, the CAA National Emissions Standards for Hazardous Air Pollutants ("NESHAP") strictly regulates asbestos-containing waste materials, including asbestos mill tailings. (40 C.F.R. §§ 61.142, 61.151 and 61.154). As early as December 7, 1971, EPA recognized the human health risk associated with asbestos exposure. 36 Fed. Reg. 23240 (December 7, 1971). The link between human health risks and even limited exposure to asbestos has been well documented by the medical, public health, and environmental community in the 37 years since EPA first recognized this hazard.

13. Results from samples taken on the VAG Site by EPA in 2007 and 2008 indicate that asbestos is present in certain areas throughout the property at levels above 80% in concentration. Aerial and other photographs show material similar in color and consistency emanating from the mine property to off-site locations.

14. The 1,540-acre VAG property is not properly secured, and trespassers can easily gain access. EPA and State of Vermont personnel have documented evidence of people going on-site

to hike, collect minerals, bike, and ride all-terrain vehicles. These activities have the potential to disturb material such that asbestos is released and/or emitted into the air and environment where further exposure to human receptors may occur.

15. There are a number of residences at or near the Site. One individual actually lives on the VAG Site as a caretaker for the property and another maintains a weekend cabin immediately down-gradient from the VAG Site. Approximately one quarter mile away, across the street from the Site, is an enclave of a dozen or so houses.

16. The Vermont Department of Health ("VDH") recently concluded a health surveillance epidemiological study of Asbestos-Related Morbidity and Mortality in Vermonters who resided in towns within a 10 mile radius of the Site. VDH used existing health surveillance data from death certificates, hospital discharge billing records, and cancer registry data for the years 1996-2005 to compare the risk of developing lung cancer, asbestosis, and/or mesothelioma in those individuals living in towns within the 10 mile radius of the mine to those living in the rest of the state.

17. Hospital discharge data compiled by VDH shows that if a Vermonter was discharged from the hospital with a diagnosis of asbestosis, he or she was statistically more likely to live in a town in close proximity to the VAG Site.

18. The death certificate data compiled by VDH demonstrates that if a Vermonter died from asbestosis or asbestosis contributed to their death, they were statistically more likely to live in a town in close proximity to the VAG Site.

19. The cancer registry data compiled by VDH shows that Vermonters who developed lung cancer were statistically more likely to live in a town in close proximity to the mine.

20. Although the VDH findings are preliminary, the study, coupled with recent air, water and soil sampling results, support the urgency of implementing the injunctive relief requested below.

FIRST CLAIM FOR RELIEF

(United States' Requests for Injunctive Relief Are Not Stayed Under Section 362(a)(1) the United States Bankruptcy Code)

21. Paragraphs 1 through 20 are realleged and incorporated herein.

22. Sections 362(a)(1) of the United States Code provides that the filing of a petition in bankruptcy operates as a stay of:

(1) the commencement or continuation . . . of a judicial proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362(a)(1).

23. Section 362(b)(4) of the Bankruptcy Code specifies that the automatic stay does not apply to the "commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police or regulatory power, including the enforcement of a judgment other than a money judgment." 11 U.S.C. § 362(b)(4).

24. The United States' enforcement of environmental laws enacted to protect public health and safety is a classic exercise of police and regulatory authority. The injunctive relief sought here requires the Defendant to abate the imminent and substantial endangerment posed by the VAG Site and by the Defendant's transport and/or disposal of solid waste containing asbestos at a number of off-site locations.

25. The Administrator of EPA has the statutory power pursuant to CAA §303 and RCRA §7003 to issue an order and/or to bring suit in federal court to require the Defendant to implement the measures set forth in the United States' prayer for relief.

26. The United States seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201(a), and a judicial order that the police and regulatory exception to the automatic stay, in Section 362(b)(4) of the Bankruptcy Code, 11 U.S.C. § 362(b)(4), applies to EPA's injunctive enforcement authority at the VAG Site, and that the Defendant is liable under CAA §303 and RCRA §7003.

SECOND CLAIM FOR RELIEF

(United States' Request for Injunctive Relief Under the Imminent and Substantial Endangerment Provision of the CAA)

27. Paragraphs 1 through 26 are realleged and incorporated herein.

28. Section 303 of the CAA, 42 U.S.C. § 7603, authorizes the United States to sue in United States district court for relief "upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment" The United States may seek to "immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary."

29. Section 302(e) of the CAA defines "persons" to include individuals, corporations, partnerships, and associations. 42 U.S.C. § 7602(e). The Defendant, G-I, is a "person" within the meaning of Sections 113(b) and 302(a) of the CAA, 42 U.S.C. §§ 7413(b) and 7602(e).

30. Section 112(b) of the CAA, 42 U.S.C. § 7603, defines “asbestos” as a hazardous air pollutant.

31. The Defendant’s activities, as prior owner and operator of the Site, are causing or contributing to air pollution within the meaning of Section 303 of the CAA, 42 U.S.C. § 7603.

32. The Administrator of EPA has received evidence that the asbestos being emitted on and from the VAG Site presents an imminent and substantial endangerment to public health or welfare, or the environment within the meaning of Section 303 of the CAA, 42 U.S.C. § 7603.

33. Pursuant to Section 303 of the CAA, 42 U.S.C. § 7603, the United States is entitled to an injunction ordering Defendant to take all actions necessary to abate the imminent and substantial endangerment posed by their emission of asbestos into the ambient air and to take such other actions as may be necessary to ensure the protection of public health or welfare or the environment.

34. The imminent and substantial endangerment to the public health or welfare or the environment presented by the Defendant’s asbestos will continue unabated unless and until this Court grants the Plaintiff’s request for declaratory and injunctive relief.

THIRD CLAIM FOR RELIEF

(United States’ Request for Injunctive Relief Under the Imminent and Substantial Endangerment Provision of RCRA)

35. Paragraphs 1 through 26 of this Complaint are incorporated herein by reference.

36. Section 7003(a) of RCRA, provides in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may

bring suit . . . against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person

. . . [or] to order such person to take such other action as may be necessary, or both. . . . The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment. 42 U.S.C. § 6973(a).

37. The asbestos-containing mining refuse material at the VAG Site constitutes a "solid waste" as that term is defined in Section 1004 (27) of RCRA, 42 U.S.C. Section 6903 (27).

38. The Defendant's past handling, storage, treatment, transportation or disposal of solid waste at the Site, and its transport and/or disposal of solid waste containing asbestos at a number of off-site locations, may present and, in fact, is currently presenting an imminent and substantial endangerment to health and the environment.

39. The imminent and substantial endangerment to health or the environment presented by the Defendant's handling, storage, treatment, transportation or disposal of solid waste containing asbestos will continue unabated unless and until this Court grants the Plaintiff's request for declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court provide the following relief:

1. A judgment declaring that G-I's obligation to comply with the Administrator's environmental requirements are an appropriate exercise of EPA's police and regulatory authority

and are not subject to the automatic stay provisions under Section 362(b)(4) of the Bankruptcy Code Section, 11 U.S.C. §362(b)(4).

2. A judgment declaring that the Defendant is liable under CAA §303 and RCRA §7003 and permanently enjoining the Defendant to implement the following actions:

- (a). Restrict existing access points to the site interior by constructing and maintaining fences or other physical barriers at locations set forth in Exhibit A to prevent human exposure to on-site asbestos-containing material;
- (b). Construct on-site security fences and/or take other security measures in order to prevent access to all Site buildings;
- (c). Maintain restricted access to the Site with security guards and conduct regular physical inspections to prevent unauthorized access. Maintain a written record of unauthorized access and changes in Site conditions;
- (d). Engage in dust suppression efforts as necessary to prevent the release of particulates from and human exposure to asbestos-containing materials which have the potential to migrate;
- (e). Conduct ambient air monitoring for asbestos at the locations indicated in Exhibit A, and other such locations as warranted, to better evaluate the effectiveness of the measures requested above; and
- (f). Investigate and document the locations of any asbestos-containing material which has been transported off-site. Submit a plan to EPA for approval for the abatement of any related off-site material that EPA determines presents, or may present, an imminent and substantial endangerment to public health, welfare or the environment, and implement the abatement plan, as approved.

3. Granting such other relief as the Court deems necessary.

Respectfully submitted,

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Exhibit A



Legend



Access Points

Monitoring Locations



Air Monitoring Points



Weather Station

Roads



Class 2 Road



Class 3 Road



Class 4 Road



Private Road



VT State Highway



Town Boundaries

Parcel Boundaries



All Other Properties



VAG Properties

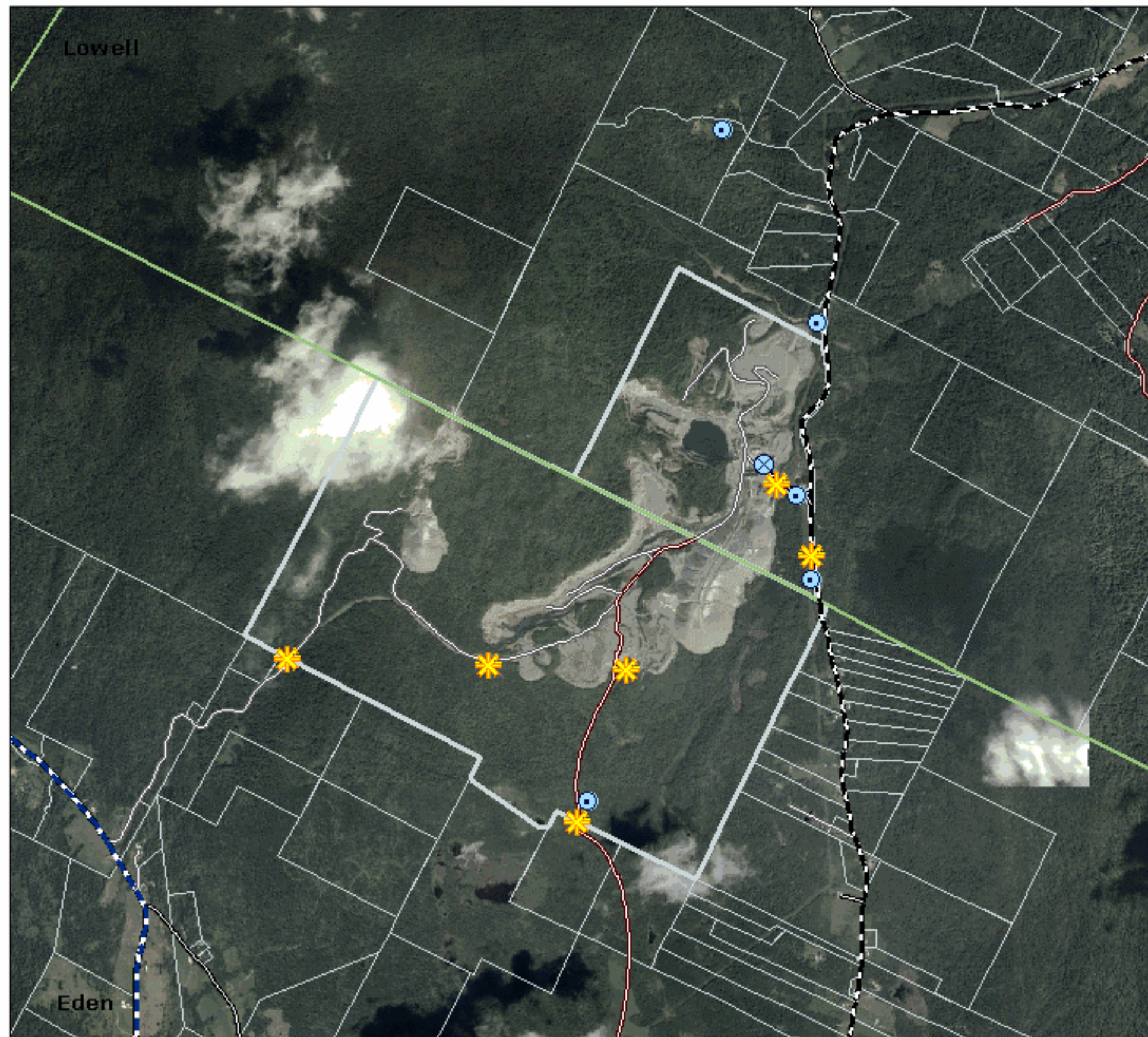


Exhibit A:

Access Points and Monitoring Locations

 **VERMONT**
Environmental Conservation

Created On: October 31, 2008

Vermont Asbestos Group (VAG)
(SMS Site # 1995-1825)

0 0.25 0.5 1
Miles